IN THE

Supreme Court of the United States

OCTOBER TERM, 1942

No. 1082 96

V. W. PETTY ..... *Petitioner*

v.

MISSOURI AND ARKANSAS RAILWAY COMPANY ..... *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ARKANSAS

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INDEX

TABLE OF AUTHORITIES

Cases Cited

STATUTES

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ARKANSAS

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, V. W. Petty, prays this Court for the issuance of a writ of certiorari to the Supreme Court of Arkansas, which is the court of last resort in that State, to review a final judgment of said court affirming a judgment of the Circuit Court of Woodruff County, Arkansas, which sustained a demurrer to petititioner's complaint and dismissed petitioner's suit against the respondent.

Your petitioner respectfully shows that the decision of the Supreme Court of Arkansas is probably not in accord with the applicable decisions of this Court, and that it decided a federal question of substance in a way probably not in accord with applicable decisions of this Court.

Summary Statement of the Case

From June, 1925, to December 3, 1935, petitioner was in the employ of respondent railway company as locomotive engineer. On August 3, 1935, the company entered into a collective bargaining agreement with its employees, effective as of August 1, 1935, of which agreement sections (d) and (e), respectively, of Article 32, read as follows:

> "(d) Enginemen shall not be discharged, suspended or demerits placed against their records until they have had a fair and impartial hearing before an officer of the Company. At such hearing they may be represented by an employee of their own choice or by the regularly constituted committee of their organization. The representative of the man involved in the hearing shall have the right to introduce witnesses and interrogate any witness giving testimony at the investigation. If found not guilty, he shall be returned to the service and paid for time lost.
>
> "(e) Enginemen shall have the right to appeal from any decision which involves discipline."

On December 3, 1935, petitioner was summarily discharged from the service of respondent without any hearing. Despite repeated demands by petitioner for such hearing, the same was consistently refused him. On December 3, 1940, petitioner filed suit against respondent in the Circuit Court of Boone County, Arkansas, alleging his discharge in violation of the agreement, and specifically

relying upon sections (d) and (e) of Article 32 thereof, as set forth above. He prayed reinstatement and damages as time lost by reason of said breach. Later, in July, 1941, voluntary nonsuit was taken and, within the month, and within the time allowed by law in which to rebring suit after nonsuit, the same suit was rebrought in the Circuit Court of Woodruff County, Arkansas. Respondent railway company filed a demurrer alleging that (a) the complaint did not state facts sufficient to constitute a cause of action, and (b) if a cause of action was stated by the complaint, the same showed on its face to be barred by the statute of limitations. The trial court sustained the demurrer and, petitioner electing to stand on his complaint and refusing to plead further, judgment was entered dismissing the complaint. On appeal to the Supreme Court of Arkansas, the Railway Labor Act, an Act of Congress, was urged by petitioner as controlling. That court treated the federal question before it and, in refusing to be bound by federal law, stated (referring to the Railway Labor Act):

> "This act created the National Railway Adjustment Board, with four Divisions, composed of an equal number of representatives of employers and employees, to adjust and 'settle all disputes, whether arising out of the application of such agreements (agreements concerning rates of pay, rules and working conditions) or otherwise * * *.' Subd. 1. While this act does not prescribe an exclusive remedy and appellant was not obliged to present his claim to Division No. 1 of said Board, *Moore* v. *Illinois Central R. Co.*, 312 U.S. 630, 631, 61 S. Ct. 754, 85 L. Ed. 1089, yet that procedure was open to him. Instead of presenting his claim to that tribunal, he elected to bring his action in this State, where the decision of this court in the Matthews case prevented his recovery. The contract under which he sues was made in 1935

and is conclusively presumed to have been made with reference to the laws of this State in force at the time it was made. As said in *Robards* v. *Brown,* 40, Ark. 423, 'The laws which are in force at the time when, and the place where, a contract is made and to be performed, enter into and form part of it'."

The *Matthews* case, referred to by the court in its opinion, *supra,* is the case of *St. Louis, I. M. & S. Ry. Co.* v. *Matthews,* 64 Ark. 398, decided in 1897, and in which an employment agreement, virtually identical with the one here involved, with respect to stipulations against discharge without just cause, or without a hearing, was held to be unilateral and unenforceable, since it required the employer to keep the employee in service indefinitely except for just cause for discharge, but did not impose any like obligation upon the employee to serve.

The Supreme Court of Arkansas, accordingly, refused to hold itself bound by the federal Act and, basing its decision on the rule announced in the *Matthews* case, declared that petitioner's employment contract was unilateral and unenforceable, and affirmed the judgment of the Woodruff Circuit Court.

Statement of Basis of Jurisdiction

The jurisdiction of this Court is invoked under Act of Congress of February 13, 1925, Chapter 229, 43 Statutes 936, Sec. 237B of the Judicial Code, 28 U.S.C. Sec. 344(b), regulating the issue of writs of certiorari to bring up for review judgments of State courts of last resort.

Date of Judgment

The judgment of the Supreme Court of Arkansas, which is probably not in accord with the applicable de-

cisions of this Court, was rendered on February 1, 1943. The opinion of the court is not yet officially reported, but may be found in 167 S.W. (2d) 895. Within the time allowed by law petitioner filed his petition for rehearing, asking that the decision be reconsiderd, but, on March 15, 1943, the petition was denied.

Federal Questions Presented

1. Does the Railway Labor Act—an Act of Congress—supersede all prior State court decisions defining the substantive rights acquired under stipulations against wrongful discharge embodied in railroad collective bargaining agreements, where such agreements are made and entered into subsequent to the enactment of, and in substantial conformity with the provisions of, the Federal Act?

2. Do the provisions of the Federal Railway Labor Act, making it the duty of carriers to make and maintain agreements with their employees concerning rules, rates of pay and working conditions, and to provide for prompt and orderly setlement of all grievances and disputes arising thereunder, abrogate, insofar as such agreements are concerned, the common law rule of contracts which holds stipulations against discharge without just cause in indefinite terms employment contracts to be unilateral and unenforceable?

Authorities Believed to Sustain the Jurisdiction

It is believed that the following are some of the cases that sustain the jurisdiction of this Court:

Where state Supreme Court treats federal questions as necessarily involved, decides them against plaintiff in error, and could not otherwise have reached the same re-

sult, it is immaterial how questions were raised, in so far as Supreme Court's jurisdiction to review decision is concerned. *Cissna* v. *State of Tennessee,* 246 U. S. 289, 38 S. Ct. 306, 62 L. Ed. 720; also see *San Jose Land & Water Co.* v. *San Jose Ranch Co.,* 189 U.S. 177, 47 L. Ed. 765; *St. Louis, Iron Mountain & Southern Ry. Co.* v. *Hesterly,* 228 U.S 702, 57 L. Ed. 1031; *Home Insurance Co., et al* v. *Dick, et al.,* 281 U.S. 397, 50 S. Ct. 338.

Reasons Relied on for the Allowance of the Writ

A

The decision of the Supreme Court of Arkansas that petitioner's election to bring his action in a State court on a matter in which both federal and state courts have concurrent jurisdiction, and to which a federal Act applies, precludes him from invoking the rights and benefits of the federal Act and that he is bound, instead, by state court decisions on the subject, is in conflict with the applicable decisions of this Court.

B

The decision of the Supreme Court of Arkansas that an agreement concerning rules, rates of pay and working conditions, made by and between respondent railroad company and its employees, as a class, to which class petitioner belonged—was unilateral and unenforceable, has the effect of nullifying the results intended by Congress in enacting the Railway Labor Act, and is in conflict with the applicable decisions of this Court.

Wherefore, your petitioner prays that a writ of certiorari issue under the seal of this Court, directed to the

Supreme Court of Arkansas, commanding that court to certify and send to this Court a full and complete transcript of the record of the proceedings of that court in *Petty* v. *Missouri and Arkansas Railway Company,* No. 6944, to the end that this cause may be reviewed and determined by this Court as provided by the statutes of the United States; and that the judgment of the Supreme Court of Arkansas be reversed by this Court, and for such further relief as to the Court may seem proper.

Dated this, the 17th day of May, 1943.

V. W. PETTY,
Petitioner

By W. R. DONHAM
Rector Building, Little Rock, Ark.

SAM M. WASSELL
Counsel
Pyramid Building, Little Rock, Ark.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1942

No. .....

V. W. PETTY ..... *Petitioner*

v.

MISSOURI AND ARKANSAS RAILWAY COMPANY ..... *Respondent*

BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

The opinion of the Supreme Court of Arkansas has not been officially reported, but it appears in the record at page ....

The date of the decree to be reviewed is February 1, 1943, and the date of the order denying a petition for rehearing is March 15, 1943.

The jurisdiction of this Court is invoked under the Act of Congress of February 13, 1925, Chapter 229, 43 Statutes 936, Section 237B of the Judicial Code, 28 U.S.C.A. Section 344(b) relating to the issuance of writs of certiorari to bring up for review judgments of state courts of last resort.

A concise statement of the case appears in the preceding petition, which is hereby adopted and made a part of this brief.

POINTS AND AUTHORITIES RELIED ON

I

It was the duty of the Supreme Court of Arkansas to apply existing federal law in adjudicating the rights of the parties under an agreement concerning rules, rates of pay and working conditions entered into by the railroad and its employees in accordance with the Railway Labor Act.

Claflin v. *Houseman,* 93 U.S. 130, 23 L. Ed. 833;

Ex parte Worcester County National Bank, 279 U.S. 347, 49 S. Ct. 368;

United States v. *Bank of New York and Trust Co.,* 296 U.S. 463, 56 S. Ct. 343, 80 L. Ed. 331;

Hines v. *Lowery,* 305 U.S. 85, 59 S. Ct. 31;
Ex parte Bransford, 310 U. S. 354, 60 S. Ct. 947.

II

It was the duty of the Supreme Court of Arkansas to construe the employment contract so as to give full effect to the ultimate aim and purpose of the Railway Labor Act.

Bird v. *United States,* 187 U. S. 118, 47 L. Ed. 100;

Takao Ozawa v. *United States,* 260 U.S. 178, 43 S. Ct. 65;

Gulf States Steel Co. v. *United States,* 287 U.S. 32, 53 S. Ct. 69;

United States v. *Powers,* 307 U.S. 214, 59 S. Ct. 805;

United States v. *American Trucking Associations,* 310 U. S. 534, 60 S. Ct. 1059.

III

In applying the rule that the parties to a contract are conclusively presumed to have contracted with reference to the laws in existence at the time when, and at the place where, the contract is made and to be performed, the applicable federal laws must be taken into account and, where the federal law and state law are in conflict, the latter must yield to the former, as being the supreme law of the land.

Ex parte Bransford, 310 U.S. 354, 60 S. Ct. 947;

Hines v. *Davidowitz*, 312 U.S. 52, 61 S. Ct. 399;

IV

It was the purpose of Congress, in enacting the Railway Labor Act, to provide a means for the orderly settlement of labor disputes and avoiding industrial strife.

Virginian Ry. Co. v. *System Federation No.* 40, 300 U.S. 515, 57 S. Ct. 592.

V

The stipulation against discharge without a hearing amounted to the expression, in contractual form, of the mandatory provisions of the Railway Labor Act, and is therefore valid and enforceable.

Railway Labor Act, 45 U.S.C., Chapter 8, Section 152;

State of Indiana ex rel Anderson v. *Brand*, 303 U.S. 95, 58 S. Ct. 443.

VI

Stipulations against wrongful discharge, or without a hearing, in employment agreements made pursuant to the Railway Labor Act, have been construed by the federal courts to be valid and enforceable, and the State courts are therefore bound to adopt such construction in order to secure uniformity in the application of a federal statute.

Yazoo & M. V. R. Co. v. *Webb,* 64 F. (2d) 902;

Moore v. *Illinois Central R. Co.,* 24 F. Supp. 731;

Illinois Central R. Co. v. *Moore,* 112 F. (2d) 959;

Moore v. *Illinois Central R. Co.,* 312 U.S. 630, 61 S. Ct. 754;

Seaboard Air Line Railway Co. v. *Horton,* 233 U.S. 492, 58 L. Ed. 1062;

Chesapeake & O. Ry. Co. v. *Kuhn,* 284 U. S. 44, 52 S. Ct. 45.

ARGUMENT

I

It was the duty of the Supreme Court of Arkansas to apply existing federal law in adjudicating the rights of the parties under an agreement concerning rules, rates of pay and working conditions entered into by the railroad and its employees in accordance with the Railway Labor Act.

In taking up and deciding the question of petitioner's rights under the Railway Labor Act, the Supreme Court of Arkansas, in its opinion in this case, said:

> "Instead of presenting his claim to that tribunal (the National Railway Adjustment Board), he elected to bring his action in this state, where the decision of this court in the Matthews case prevented his recovery."

The *Matthews* case referred to (*St. Louis, I. M. & S. Ry. Co.* v. *Matthews*, 64 Ark 398) was decided by the Supreme Court of Arkansas in 1897; nearly thirty years before Congress enacted the Railway Labor Act. It was there held that a stipulation against discharge without just cause, or without a hearing, was unilateral and unenforceable.

On August 1, 1935, the effective date of the contract sued on by petitioner herein, the Railway Labor Act was in full force, and had been in full force for nearly a decade. It was still in force on February 1, 1943, the date the opinion of the Supreme Court of Arkansas was rendered in this case, and was still in full force on March 15, 1943, the

date on which that court denied petitioner's petition for rehearing.

While conceding that petitioner had his remedy under the Railway Labor Act, the Supreme Court of Arkansas nevertheless misconstrued the scope of that remedy, and of the Act, in holding that petitioner's election to sue in the State courts precluded him from invoking a substantial right accorded him by a federal law, and that he was bound, instead, by the State rule as announced in the *Matthews* case. Such holding is clearly at variance and in conflict with the long established and well settled principle, as declared by this Court, that it is obligatory upon the state courts to apply federal laws in all cases applicable.

> "Upon the state courts, equally with the courts of the Union, rests the obligation to guard and enforce every right secured by the Constitution and laws of the United States whenever those rights are involved in any suit or proceedings before them."
>
> *United States* v. *Bank of New York & Trust Co.*, 296 U. S. 463, 56 S. Ct. 343, 80 L. Ed. 331.

> "The laws of the United States are laws in the several States, and just as much binding on the citizens and courts thereof as the State laws are."
>
> *Claflin* v. *Houseman*, 93 U.S. 130, 23 L. Ed. 833.

> "Congressional enactments in pursuance of Constitutional authority are the supreme law of the land."
>
> *Hines* v. *Lowrey*, 305 U.S. 85, 59 S. Ct. 31.

Also see:

> *Ex parte Worcester County National Bank*, 279 U.S. 347, 49 S. Ct. 368;
>
> *Ex parte Bransford*, 310 U.S. 354, 60 S. Ct. 947.

II

It was the duty of the Supreme Court of Arkansas to construe the employment contract so as to give full effect to the ultimate aim and purpose of the Railway Labor Act.

> "In the interpretation of statutes, the function of the courts is easily stated. It is to construe the language so as to give effect to the intent of Congress."
>
> *United States* v. *American Trucking Associations*, 310 U.S. 534, 60 S. Ct. 1059.

The effectiveness of the Railway Labor Act depends ultimately upon the enforceability of the employment agreements concerning rules, rates of pay and working conditions, made in accordance with the provisions of the Act; and to deny validity to such agreements on the ground that stipulations against wrongful discharge, embodied in the agreements, renders them unilateral and unenforceable, is to do violence to the very spirit and purpose of the Act. And the employment agreements which result from the collective bargaining authorized and commanded by the Act are, in the final analysis, the goal toward which the entire Act is directed. The collective bargaining, required by the Act is but an intermediate step toward that end. Surely, it is not to be presumed that Congress intended the Railway Labor Act to be a promising highway leading to nothing more substantial than a mirage.

> "There is a presumption against a construction which would render a statute ineffective or inefficient, or which would cause grave public injury or even inconvenience."
>
> *United States* v. *Powers*, 307 U.S. 214, 59 S. Ct. 805;
>
> *Bird* v. *United States*, 187 U.S. 118, 47 L. Ed. 100.

"When possible, every statute should be rationally interpreted with the view of carrying out the legislative intent."

Gulf States Steel Co. v. *United States*, 287 U.S. 32, 53 S. Ct. 69.

"It is the duty of this Court to give effect to the intent of Congress. Primarily, this intent is ascertained by giving the words their natural significance, but if this leads to an unreasonable result plainly at variance with the policy of the legislation as a whole, we must examine the matter further. We may then look to the reason of the enactment and inquire into its antecedent history and give it effect in accordance with its design and purpose, sacrificing, if necessary, the literal meaning in order that the purpose may not fail."

Takao Ozawa v. *United States*, 260 U.S. 178, 43 S. Ct. 65.

III

In applying the rule that the parties to a contract are conclusively presumed to have contracted with reference to the laws in existence at the time when, and at the place where, the contract is made and to be performed, the applicable federal laws must be taken into account and, where the federal law and state law are in conflict, the latter must yield to the former, as being the supreme law of the land.

The Railway Labor Act is in effect in all forty-eight of the States. It is as much a part of Arkansas law as it is a part of the laws of California or New York. As such, it becomes a part of every contract of employment resulting from collective bargaining under the Act, regardless of where the contract is made or to be performed. Further-

more, where the State law is in conflict with the provisions of the Act, the Act must prevail.

> "The nature of the power exerted by Congress, the object sought to be attained, and the character of the obligations imposed by the law, are all important in considering the question of whether supreme federal enactments preclude enforcement of State laws on the same subject."
>
> *Hines* v. *Davidowitz*, 312 U.S. 52, 61 S. Ct. 399.

> "The declaration of the supremacy clause gives superiority to valid federal acts over conflicting state statutes."
>
> *Ex parte Bransford*, 310 U.S. 354, 60 S. Ct. 947.

IV

It was the purpose of Congress, in enacting the Railway Labor Act, to provide a means for the orderly settlement of labor disputes and avoiding industrial strife.

> "Its (the Railway Labor Act) major objective is the avoidance of industrial strife."
>
> *Virginian. Ry. Co.* v. *System Federation No.* 40, 300 U.S. 515, 57 S. Ct. 592.

V

The stipulation against discharge without a hearing amounted to the expression, in contractual form, of the mandatory provisions of the Railway Labor Act, and is therefore valid and enforceable.

Subdivision 1, 45 U.S.C., Chapter 8, Section 152, reads as follows:

> "It shall be the duty of all carriers, their officers, agents and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof."

Section (d) of Article 32 of the agreement sued on by petitioner reads as follows:

> "Enginemen shall not be discharged suspended or demerits placed against their records until they have had a fair and impartial hearing before an officer of the Company. At such hearing they may be represented by an employee of their own choice or by the regularly constituted committee of their organization. The representative of the man involved in the hearing shall have the right to introduce witnesses and interrogate any witness giving testimony at the investigation. If found not guilty he shall be returned to the service and paid for time lost."

This stipulation is clearly in line with the provision of the Act quoted above and also with the provision of Subdivision 2 of the same section of the Act which reads:

> "All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute."

In other words, the statutory requirements have been incorporated into the agreement; the Act has become part of the contract by express terms. The stipulation is there-

fore valid and enforceable. The Act not only makes it the duty of the carrier to *make* agreements concerning rates of pay, rules and working conditions, but also to *maintain* such agreements. In this connection, the only reasonable and logical construction to be placed on the word "maintain" is that the carrier shall "adhere to", "support", "uphold", and consider itself bound by, the agreement in all its terms. Any construction to the contrary would vitiate the entire contract.

In the case of *State of Indiana ex rel Anderson* v. *Brand*, 303 U.S. 95, 58 S. Ct. 443, this Court had before it the question of the validity of an indefinite term teacher's employment contract, authorized by Indiana statute. The federal question before the Court in that case was whether not a subsequent repealing act, which repealed the act authorizing such indefinite term contracts, was in violation of the Constitutional prohibition against legislation impairing the obligation of contracts. The Court, in its opinion, stated that, as in most cases involving the impairment clause, it was primarily necessary to determine whether or not there was a valid contract. The Court thereupon found that the indefinite term contract, as authorized by the Indiana Legislature, was valid.

A fortiori, a contract authorized by federal law, and containing provisions directly in line with the requirements of the federal law, must necessarily, if the law itself is constitutional, be valid as to such provision; and its validity extends throughout the forty-eight States alike, state law to the contrary, notwithstanding.

VI

Stipulations against wrongful discharge, or without a hearing, in employment agreements made pursuant to the Railway Labor Act, have been construed by the federal courts to be valid and enforceable, and the State courts are therefore bound to adopt such construction in order to secure uniformity in the application of a federal statute.

The question of the validity of stipulations against wrongful discharge has been before the federal courts on at least two occasions and, in each instance, their validity upheld. And both of the cases referred to were decided prior to the decision in petitioner's case. In the first of these cases, decided by the Circuit Court of Appeals, Fifth Circuit (Miss.) it was said of such agreement:

> "But the employment though indefinite as to time is a relationship while it lasts, and is subject to the conditions fixed in the working agreement for the industry. Thus a worker cannot be discharged for causes prohibited by the agreement or without a hearing if that is provided . . ."

Yazoo & M. V. R. Co. v. *Webb*, 64 F. (2d) 902.

In the second of the two cases, the United States District Court (Mississippi) in construing such stipulations against wrongful discharge, held the contract to be valid.

Moore v. *Illinois Cent. R. Co.*, 24 F. Supp. 731.

Upon appeal of that same case to the Circuit Court of Appeals, Fifth Circuit, it was there held that such stipulation was valid and enforceable. In this connection, the court said:

"The provision in the collective agreement for a hearing before the carrier's officers, with appeal to the highest, is in line with the requirements of the statute . . . .

"We find in these provisions a clear implication that discharge is not to be at the employer's will, but only for a just cause."

Illinois Central R. Co. v. *Moore*, 112 F. (2d) 959.

The Circuit Court of Appeals held, however, that the cause of action was barred by the statute of limitations and, on that ground alone, reversed the judgment of the District Court.

The case was then brought to this Court on certiorari. And, once again, the sole question upon which the decision rested was the question of limitations. This Court held that the Circuit Court of Appeals erred in refusing to consider itself bound by the Mississippi court's interpretation of its own statute of limitations. For that reason, the judgment of the Circuit Court of Appeals was reversed *and the judgment of the District Court affirmed.*

Moore v. *Illinois Cent. R. Co.*, 312 U.S. 630, 61 S. Ct. 754.

If, then, there is to be uniformity in the application of federal law, it must follow that the interpretation, by the federal courts sitting in one State, of the substantive rights accorded by an Act of Congress, should be controlling upon all state courts when the same question, arising under the same Act, is before them for consideration. Any rule to the contrary could only lead to endless confusion in the interpretation and application of federal law, and the rights of the parties would depend entirely

upon local law. Thus, if petitioner could have brought his suit in Mississippi, the rule as announced in the *Webb* and *Moore* cases, *supra*, would have resulted in a judgment in his favor. But, being precluded from suing in Mississippi for jurisdictional reasons petitioner was obliged to maintain his action in Arkansas, with the result that the same federal right is denied him.

> "And where Congress enacts a law within the limits of its power, that law should be enforced uniformly throughout the entire United States."
>
> *Seaboard Air Line Railway* v. *Horton*, 233 U.S. 492, 58 L. Ed. 1062.

> "Moreover, in proceedings under that act (Federal Employers' Liability Act), wherever brought, the rights and obligations of the parties depend upon it and applicable principles of common law as interpreted and applied in the federal courts."
>
> *Chesapeake & O. Ry. Co.* v. *Kuhn*, 284 U. S. 44, 52 S. Ct. 45.

CONCLUSION

The judgment of the Supreme Court of Arkansas draws into question the rights and obligations created by an Act of Congress conceded to be valid; denies those rights and obligations; and is probably not in accord with the applicable decisions of this Court. It is respectfully submitted that the judgment of the Supreme Court of Arkansas should be reversed, and the cause should be remanded to that court with directions to enter a judgment reversing the judgment of the Circuit Court of Woodruff County, Arkansas, and remanding the cause to said court with directions to overrule the demurrer of respondent to petitioners's complaint, and for further proceedings not inconsistent with this Court's opinion herein.

Respectfully submitted,

W. R. Donham

Sam M. Wassell

Counsel for Petitioner

IN THE

Supreme Court of the United States

OCTOBER TERM, 1942

No. [redacted] 96

V. W. PETTY, ... Petitioner

vs.

MISSOURI AND ARKANSAS RAILWAY COMPANY .. Respondent

RESPONSE BRIEF AND ARGUMENT TO PETITION FOR CERTIORARI

MAJOR W. S. WALKER,
VIRGIL D. WILLIS, Respondent
Counsel for [redacted]

HEADLIGHT PRINTING COMPANY, HARRISON, ARKANSAS

INDEX

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MISSOURI AND ARKANSAS RAILWAY COMPANY .. Respondent

RESPONSE BRIEF AND ARGUMENT TO PETITION FOR CERTIORARI

Was there a federal question involved or was one necessarily involved in the decision of this case by the Supreme Court of the State of Arkansas.

If one were involved it was not by reference except that petitioner, in his motion for re-hearing, raised the question for the first time. The record discloses only one reference to what is called the Railway Labor Act and that was in the opinion of the Arkansas Supreme Court as shown by the record at page 10 as follows:

> "Our attention is called to the Railway Labor Act, enacted by Congress in 1926, as amended in 1934 and 1936, U. S. C. A., Title 46, Chapter 8, as being persuasive of the trend of times and that the rule in the Mathews case should be overruled."

Until the motion for re-hearing, this Act had never been pleaded, however, on this motion petitioner urged that the Supreme Court of the United States had determined the question and that the State Court was bound thereby. Yet, to date, respondent has not been favored with the presentation of any authority to this effect, neither has our diligent search found one.

Moore vs Illinois Central R. Co., relied upon by petitioner as decisive of the one and only question presented by this application, we urge more nearly supports the decision of the Arkansas Supreme Court that no federal question was involved. The Court below simply said that it did not care to overrule the Mathews case because it saw nothing in that holding that ran counter to any well established rule of the law of contracts, and that appellant there, petitioner here, conceded or realized that the Mathews case was against him and asked the court to overrule it on the ground that the opinion was not sound.

In construing what was alleged to be a collective agreement, entitled Missouri and Arkansas Railway Company Schedule of Rules, Rates of Pay and Working Conditions to Engineers, Firemen and Hostlers, under which petitioner alleged he was working as an engineer, the Arkansas Court applied the Arkansas law, as being the law at the time when and the place where the oral contract of employment (the only one on which petitioner could recover) was made. In other words it simply applied the Arkansas law to an Arkansas contract as this court applied the Mississippi law in the Moore case, supra.

The Arkansas Court continued:

> "But we fail to discover any evidence of any agreement on the part of appellant to serve any specified time. Hence, there was no contract that he would serve and that appellee would employ him to serve any stated time, the agreement of both being necessary to fix the time of service—and, consequently no violation of a contract by discharge of appellant before the expiration of any particular time."

This appears to be sound reasoning and has been adopted by many courts. However, insofar as the question presented here, we are not concerned with the soundness or unsoundness of this reasoning because this court in 1934 in the case of Mutual Life Insurance Company vs. Johnson, 293 U. S. 335, reiterated its comity doctrine in the following appropriate and eloquent language:

> "Without suggesting an independent preference either one way or the other we yield to the judges of Virginia, expounding a Virginia policy and adjudging its effect..... All that is here for our decision is the meaning, the tacit implications of a particular set of words, which, as experience has shown, may yield a different answer to this reader and that one..... The Summum jus of power, whatever it may be, will be subordinated at times to a benign and prudent comity..... With choice so 'balanced with doubt,' we accept as our guide the law declared by the state where the contract had its being."

Why should the Supreme Court of the United States be concerned with, or why should it grant certiorari to review a decision of the Supreme Court of any state in construing simple little contracts of employment between individuals of that state?

The Arkansas Court in rendering its decision in this case quoted the language of the Supreme Court of the State of Kentucky in L

& N. R. Co. vs. Bryant, 263 Ky. 578, 92 S. W. 2d 749, decided March 27, 1936, involving the interpretation of a contract almost identical with the one under consideration. The language of this court pointed out a simple remedy, a way to make the contracts valid. We quote:

> "If employees desire its elimination from their contracts of employment, it could easily be done by providing for definite periods of service conditioned upon ability and disposition to perform them, with optional rights in the employees to renew the contract in the absence of legal reasons against it, with corresponding obligation of the employer to abide by the option so given."

In the Moore case referred to by petitioner, the Court of Appeals specifically held that an individual employee suing on his contract of employment to enforce his individual right to recover pay for damages for discharge was not suing upon the collective agreement as a complete contract made for his benefit and referred to Yazoo and Miss. Valley Ry. Co. vs Sideboard, which case was also cited by petitioner to support the theory that a federal question was involved in the present case. The court of appeals in the Moore case continued:

> "The federal statutes above referred to speak of a collective agreement as 'an agreement concerning rates of pay, rules and working conditions'; (45 U. S. C. A. Sec. 152 (1), (6), and often, but the individual contract is referred to as 'the contract of employment between the carrier and each employee'; (45 U. S. C. A. 152 (8). The collective agreement may contain a contract between the union and the carrier as, for an open and closed shop, collection of union dues, and the like, but it is not itself a contract of employment. It binds no one to serve the carrier and binds the carrier to hire no particular person. It is only a basis agreed upon as mutually satisfactory for making contracts of employment.

> It follows clearly that when an individual employee sues for damages for a breach of his contract of employment because of a discharge contrary to the collective agreement as Moore does....., he is not suing on the written collective agreement but upon his parol contract of hiring which adopted those terms of the collective agreement which are applicable to him. Moore's contract of employment in 1933 would not be established by merely proving his written collective agreement made in 1924 by a union to which he did not belong and for a railroad for which he did not work."

If petitioner here had wanted to extend his parol agreement, or better still, had desired to enter into a written one which embodied all the essentials necessary under Arkansas law to make it binding, there was nothing to prevent his doing so.

As far as the record is concerned, petitioner is an Arkansas citizen and he was dealing with another Arkansas citizen doing intrastate business. In the Moore case, Moore was dealing with an interstate carrier, but the federal court applied the Mississippi law. Upon the same reasoning would not the Supreme Court of Arkansas be the proper tribunal to construe the parol contract by applying its rule which was in force when the oral agreement was made?

It would serve no purpose and certainly not enlighten this court to present a history of its own decisions upon the question of "Law Applicable in Federal Courts." Suffice it to say that this history has been one of dissents from Swift vs. Tyson in 1842, to Erie Ry. Co., vs Tompkins in 1938. At least, under the doctrine of the Erie case variance between **substantive** law applied in the state courts and in the federal courts in non-federal matters is reduced to a minimum. It is realized by the bar that it is difficult to determine when the border line of procedure ends and substantive law begins in some cases, however, respondent humbly suggests that the Supreme Court of the United States is not interested in individual con-

tracts of employment in the State of Arkansas. So far as the record is concerned, petitioner belongs to no organization and did not at the time of his alleged agreement. He merely alleged that he was discharged while on a list of active engineers employed by defendant and at the time of his discharge was working under an employment agreement which became effective August 1, 1935, and embodied in his complaint Sections (d) and (e) of Article 32 of the collective agreement. Since this was a collective agreement, it was not one under which petitioner could sue for damages for discharge. He would be compelled to sue upon an individual agreement which was implied. It was not even expressed as to length of service, etc. The Arkansas Supreme Court said it was unilateral and too indefinite as to form a binding agreement to work for any certain length of time; yet, petitioner would ask this court to review this judgment on certiorari urging that a federal question was necessarily involved because the Railway Labor Acts makes it the duty for all carriers and their employees TO EXERT EVERY REASONABLE EFFORT to make and maintain agreements concerning rates of pay, working conditions, etc. What these agreements are, if the employer and employee enter into them, is a matter of simple contract. They are left free as to terms, conditions and as to what will be the individual contracts of employment.

Hundreds of analogous situations could be drawn where questions, arising because of a federal law, were left to the interpretation of the several states in the determination of the effect of the federal law. One of the common examples of this and one on which the Supreme Court has had no difficulty in concluding, is the Revenue Law and its application to property rights as determined by state law. In a suit by trustees to obtain the construction of a will and to determine the validity of certain assignments affecting the relation of the revenue law to the subjects, the District Court in Commissioner vs Blair, 60 Fed. (2d) 340, made a construction that the trusts were "spendthrift." On certiorari to this court, 288 U. S. 602, it

was held that the construction of the Illinois Court should be applied. Certiorari was denied. The Trustees then went to the Superior court of Cook County, Illinois to obtain a construction of the will as well as the validity of the assignments. The opinion of the State Court was then received by the Board of Tax Appeals, where the case originated. The Board applied the state decision to determine the petitioner's tax liability. The Circuit Court of Appeals again reversed the Board and this court granted certiorari because of the conflict in decisions of the state and federal courts. Mr. Chief Justice Hughes delivered the opinion of the court in Blair vs. Commissioner, 300 U. S. 5. It was held that the validity of the assignment was a question of local law.

> "Here, after the decision in the first proceeding, the opinion and decree of the state court created a new situation. The determination of petitioner's liability for the year 1923 had been rested entirely upon the local law. The supervening division of the state court interpreting that law in direct relation to this trust cannot justly be ignored in the present proceeding, so far as it is found that the local law is determinative of any material point in the controversy. The question of the validity of the assignment is a question of local law..... By that law the character of the trust, the nature and extent of the interest of the beneficiary, and the power of the beneficiary to assign that interest in whole or in part, are to be determined. The decision of the state court upon these questions is final."

In The Alternative, The Statute Of Limitations

The Supreme Court of Arkansas said it pretermitted a decision of the question of the application of the statute of limitations which was specifically pleaded by defendant in the court below. Petitioner alleged that he was discharged December 3, 1935, and that his first action was filed in the Boone Circuit Court December 3, 1940.

SECTION 8928 POPE'S DIGEST of the Statutes of Arkansas is as follows:

> "The following actions shall be commenced within three years after the cause of action shall accrue and not thereafter.
>
> First. All actions founded upon any contract or liability expressed or implied, not in writing."

It is well-settled law that a contract is unwritten if the contract itself cannot be proven wholly by writings. The Arkansas Supreme Court has adopted this view in the construction of this statute. The applicable statute of limitations must be determined by the nature of the contract on which the pleader bases his cause of action. Sommer vs Nakdiemer, 97 Fed. (2d) 715.

As respects determination of applicable statute of limitations, the fact that plaintiff's right to recover may be evidenced in part by written instrument, does not necessarily mean that his cause of action is on an instrument in writing. Sommer vs. Nakdiemer 97 Fed. (2d) 715. This was the Eighth Circuit construing the Arkansas three year statute of limitations, reviewing the Arkansas law.

This court can now apply the Arkansas Law on the question of The Statute of Limitations.

Without a cross-petition or appeal a respondent or appellee may support the judgment in his favor upon grounds different from those upon which the court below rested its decision. McGoldrich vs Compagnie Generale, 309 U. S. 430 at page 434. In this opinion the court also said:

> "But it is also a settled practice of this court in the exercise of its appellate jurisdiction, that it is only in exceptional cases, and then only in cases coming from the federal courts, that it considers questions urged by a petitioner or appellant, not pressed or passed upon in the courts below."

It is again called to the attention of this court that the question presented in the petition here was not raised in the Woodruff Circuit Court where the cause was originally heard and was not raised in the Supreme Court of Arkansas until the motion for rehearing.

Upon the rules of these cases cited it is urged that should this court grant certiorari, the Arkansas law with reference to the statute of limitations should be applied.

Conclusion

Petitioner has presented a brief, citing many authorities which respondent urges shed no light on the question raised; or, rather what respondent urges is an alleged question. In referring to the Moore case, or for that matter any other case cited, petitioner advisedly does not urge that the Supreme Court of Arkansas is not in accord with the applicable decisions of this court. The words "probably not" have been used. We would respectfully chide counsel for petitioner on the weakness of this assertion and at the same time express our respect for their frankness.

We would respectfully urge that the petition be denied and in the alternative that this court apply the Arkansas Statute of Limitations.

Respectfully submitted,

MAJOR W. S. WALKER,

VIRGIL D. WILLIS,

Counsel for [redacted] Respondent

(10)

IN THE

Supreme Court of the United States

OCTOBER TERM, 1943

No. 96

V. W. PETTY ..... *Petitioner*

v.

MISSOURI AND ARKANSAS RAILWAY COMPANY..... *Respondent*

REPLY BRIEF FOR PETITIONER

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PARAGON PRINTING CO., LITTLE ROCK

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MISSOURI AND ARKANSAS RAILWAY COMPANY ..... *Respondent*

REPLY BRIEF FOR PETITIONER

At the outset, and in order to avoid any possible confusion to the Court which might otherwise result, petitioner deems it advisable to direct the Court's attention to, and correct, the erroneous designation in respondent's brief of Major W. S. Walker and Mr. Virgil D. Willis as "Counsel for Petitioner," which appears both on the cover of respondent's brief and at page 9 thereof, and which should be amended to read "Counsel for Respondent."

Certain fallacious arguments and erroneous statements appear in respondent's brief, which petitioner feels should not go unanswered. They are:

First: That a federal question was raised by petitioner for the first time in his motion for rehearing.

The answer to this erroneous statement is apparent in the opinion of the Supreme Court of Arkansas, for that opinion specifically refers to the federal question urged by petitioner on appeal; proceeds to discuss the question, and decides it adversely to petitioner.

The Supreme Court of the United States, in the case of *Cissna* v. *Tennessee*, 246 U. S. 289, said:

> "But if the supreme court of the state treated Federal questions as necessarily involved, and decided them adversely to plaintiff in error, and could not otherwise have reached the result that it did, it becomes immaterial to consider how they were raised."

Second: Respondent, on page 5 of its brief, alludes to the decision of this Court in the case of *Erie Ry. Co.* v. *Tompkins*, 304 U.S. 64. In so doing, respondent labors under a very serious misapprehension as to the application of the doctrine announced therein. In the opinion in that case, it was said (p. 78):

> "*Third*: Except in matters governed by the Federal Constitution or by acts of Congress, the law to be applied in any case is the law of the state."

The *Erie* case, in short, makes it obligatory upon *federal courts* to apply state laws in matters *not governed* by the Federal Constitution or by acts of Congress; but it does not in any sense prohibit the federal courts from exercising an independent judgment in their application

of positive federal law. In the application of federal law, on the other hand, state courts are not free to apply a local common law rule in their construction of a federal statute, where such rule is contrary to the federal courts' previous construction of that statute.

> "The States cannot, in the exercise of control over local laws and practice, vest state courts with power to violate the supreme law of the land."
>
> *Kalb* v. *Feuerstein*, 308 U.S. 433.

In the case at bar, petitioner urged the Railway Labor Act as controlling. The Supreme Court of Arkansas, in passing upon this point, said:

> "While this act does not prescribe an exclusive remedy and appellant was not obliged to present his claim to Division No. 1 of said Board (National Railway Adjustment Board) . . . . yet that procedure was open to him. Instead of presenting his claim to that tribunal, he elected to bring his action in this state, where the decision of this court in the Matthews case prevented his recovery" (R. 10).

Subdivision 2, 45 U.S.C., section 152 (Railway Labor Act) reads:

> "All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute."

The breach sued on by petitioner was the failure and refusal by respondent to accord the hearing provided for in the employment agreement. The stipulation against

wrongful discharge without a hearing, contained in the agreement, was in substantial conformity with the section of the Statute quoted above, and its breach was in violation of the positive duty imposed by the Act. The obligation to accord the hearing does not, therefore, depend for its enforceability upon any consideration moving from petitioner; it is, on the contrary, an obligation created by federal statute, and the common law rule of contracts, with regard to mutuality of obligation, is thereby superseded to that extent.

Respondent, on pages 4 and 5 of its brief, quotes from the opinion of the Circuit Court of Appeals, Fifth Circuit, in the case of *Illinois Cent. R. Co.* v. *Moore*, 112 F. (2d) 959; which case petitioner also cites in his brief at page 21. Respondent, however, insists upon relying on the precise point in that case which was the basis for its subsequent reversal by this Court (*Moore* v. *Illinois Cent. R. Co.*, 312 U.S. 630). Both the Circuit Court of Appeals and the United States District Court (*Moore* v. *Illinois Cent. R. Co.*, 24 F. Supp. 731) concurred, nevertheless, in holding that the stipulation against discharge without a hearing was valid and enforceable; the Circuit Court of Appeals saying:

> "The provision in the collective agreement for a hearing before the carrier's officers, with appeal to the highest, *is in line with the requirements of the statute* . . . ." (Italics supplied).

Upon that point, that court was construing the effect of a contract under a federal statute, and, in so holding, was not in conflict with the doctrine of the *Erie* case. On the contrary, the Supreme Court of Arkansas was obliged, in the case at bar, to follow the federal courts' holding in that respect.

Third: Respondent urges, in the alternative, that this Court find in its favor on the question of limitations, which was the second ground raised in its demurrer (R. 3, 4).

The Arkansas statutes of limitations with respect to contracts are as follows:

> "The following actions shall be commenced within three years after the cause of action shall accrue, and not after:
>
> "*First.* All actions founded upon any contract or liability, expressed or implied, not in writing (a) . . . . ."
>
> *Pope's Digest of the Statutes of Arkansas*, Sec. 8928.

> "Actions on promissory notes, and other instruments in writing, not under seal, shall be commenced within five years after the cause of action shall accrue, and not afterward."
>
> *Ibid.*, Sec. 8933.

In support of its contention, respondent, on page 7 of its brief, states:

> "The Supreme Court of Arkansas said it pretermitted a *decision* of the question of the application of the statute of limitations which was specifically pleaded by defendant in the court below" (Italics ours.)

As a matter of fact, respondent has indulged in a subtle, but nonetheless prejudicial, misstatement of the language of that court's opinion. The majority opinion states, not that it pretermitted a *decision* of that question, but that it would pretermit a *discussion* of it (R. 7). There

is a substantial difference between the decision of a point and a mere discussion of it. It is quite evident that the question of limitation, raised by respondent's demurrer, was considered at some length by the court, and rejected by the majority. This is reflected by the fact that the Chief Justice concurred in the *result*, but upon the ground that the three-year statute of limitations applied (R. 11). Mr. Justice Carter also concurred and, while his written concurring opinion does not appear in the record in this case, it is reported in full in *Petty* v. *Missouri & Arkansas Ry. Co.*, 167 S.W. (2d) 895. His concurrence in the result is also based upon the three-year statute of limitations.

It should not be overlooked that the question of limitations in this case was raised by demurrer, and the rule in Arkansas is that, in an action at law, the defense of limitations cannot be raised by demurrer unless the complaint not only shows that the time in which to bring the action has elapsed, but that the special things which take it out of the statute do not exist.

Central Clay Drainage Dist. v. *Hunter*, 174 Ark. 293;

McCollum v. *Niemeyer*, 142 Ark. 471;

Berg v. *Johnson*, 139 Ark. 243;

Rogers v. *Ogburn*, 116 Ark. 233.

It is also the rule in Arkansas that a demurrer to a complaint admits the truth of the allegations *and all reasonable inferences which can be drawn therefrom.*

Herndon v. *Gregory*, 190 Ark. 702;

Watson v. *Poindexter*, 176 Ark. 1065;

Brown v. *Arkansas Central Power Co.*, 174 Ark. 177;

Life & Casualty Co. v. *Ford*, 172 Ark. 1098.

As to the reasonable inferences to be drawn from petitioner's complaint: it is alleged therein that the employment agreement relied upon by petitioner was "*entitled* 'Missouri & Arkansas Railway Company Schedule of Rules, rates of pay and Working Conditions to Engineers, Firemen and Hostlers'." It is also alleged that certain sections "of Article 32 of said agreement are as follows, to-wit:" setting forth, *verbatim*, the sections involved, and enclosing the same in quotation marks (R. 2). From the use of the word "entitled" and the employment of quotation marks in setting out, *verbatim*, the specific sections of the contract relied upon, the logical and reasonable inference to be drawn is that petitioner was pleading a written contract; which reasonable inference is admitted by the demurrer.

In 37 Corpus Juris, section 713 (page 1211) it is said:

> "Where a complaint, for a breach of contract, does not show that the contract was in writing, it will be presumed upon a demurrer raising the statute of limitations that the contract was in writing, when the statutory period for such contracts has not yet run."

The complaint in this case alleges that petitioner was discharged by respondent on December 3, 1935 (R. 1, 2), and that suit was first filed in Boone County Circuit Court on December 3, 1940 (R. 3).

The Arkansas rule for computing time in the application of statutes of limitations is laid down in the case of *Peay* v. *Pulaski County*, 104 Ark. 641, as follows:

> "The rule for computing time in statutes of limitations in this state is to exclude the first day and include the last day."

And, in *Massachusetts Bonding & Ins. Co.* v. *Home Life & Acc. Co.*, 119 Ark. 102, it is again stated:

> "That is to say, the general rule is that, in computing the time, the first day is to be excluded and the last day is to be included . . . We have followed this general rule in the case of taking appeals and in construing the staute of limitations."

Petitioner's cause of action having accrued on December 3, 1935, and suit filed on December 3, 1940, the bar of the five-year statute of limitations had not, under the rule above stated, intervened.

It is respectfully submitted that the petition for certiorari should be granted.

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Sam M. Wassell
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Counsel for Petitioner

(11)

IN THE

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OCTOBER TERM, 1943

No. 96

V. W. PETTY ..... *Petitioner*

v.

MISSOURI AND ARKANSAS RAILWAY COMPANY ..... *Respondent*

PETITION FOR REHEARING

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SAM M. WASSELL
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PARAGON PRINTING CO., LITTLE ROCK

INDEX

TABLE OF AUTHORITIES

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PETITION FOR REHEARING

Petitioner, V. W. Petty, respectfully prays that a rehearing be granted herein and for grounds thereof, states:

1. That the issue herein involves a Federal question of substance; namely, whether employment contracts made pursuant to the provisions of the Railway Labor Act, an Act of Congress, with reference to stipulations against discharge without a hearing, are unilateral and unenforcible.

2. That there is a conflict in the decisions of the various courts of last resort of the several states on this

question, and that the precise question has never been decided by the Supreme Court of the United States for the guidance of inferior or subordinate courts.

3. That the issue involved is one of public importance.

WHEREFORE, petitioner prays that the Order heretofore made on October 11, 1943, denying certiorari to the Supreme Court of Arkansas, be set aside and that a rehearing be granted.

Respectfully submitted,

W. R. DONHAM
Rector Building
Little Rock, Arkansas

SAM M. WASSELL
Pyramid Building
Little Rock, Arkansas

Counsel for Petitioner

We, W. R. Donham and Sam M. Wassell, do certify that we are counsel for V. W. Petty, petitioner herein; that we have prepared the above and foregoing Petition for Rehearing; that said Petition is presented in good faith and not for delay, and that we believe the grounds thereof to be well taken.

Dated this ..... day of October, 1943.

.....

W. R. DONHAM

.....

SAM M. WASSELL
Counsel for Petitioner

BRIEF ON REHEARING

1.

The question presented in this case is whether or not contracts made between railroad companies and their employees, since the enactment by Congress of the Railway Labor Act (45 U.S.C.A. § 151 *et seq.*) are enforcible with respect to stipulations against wrongful discharge, or discharge without a hearing. Involving, as it does, an Act of Congress and the rights accorded to railroad employees thereunder, it is necessarily a Federal question of substance.

2.

Railroad employment agreements such as the one involved in this case have been before the various state courts of last resort a number of times since the enactment of the Railway Labor Act, and also before the United States Circuit Court of Appeals for the Fifth Circuit. The Circuit Court of Appeals has held such stipulations against wrongful discharge, or without a hearing to be enforcible.

Yazoo & M. V. R. Co. v. *Webb*, 64 F. (2d) 902;

Illinois Cent. R. Co. v. *Moore*, 112 F. (2d) 959.

And the state courts of last resort in Mississippi and Nebraska have held the same.

McGlohn v. *Gulf & S. I. R. R.*, 179 Miss. 396, 174 So. 250;

Rentschler v. *Missouri Pac. R. Co.*, 126 Neb. 493, 253 N.W. 694, 95 A.L.R. 1.

State courts holding to the contrary include those of Arkansas and Kentucky.

Petty v. *Missouri & Arkansas R. Co.*, 167 S.W. (2d) 895;

Louisville & N. R. Co. v. *Bryant*, 263 Ky. 578, 92 S.W. (2d) 749.

The Supreme Court of the United States has never passed precisely upon the question at issue herein, and the state courts of last resort are, as remarked in the opinion in the *Rentschler* case, *supra*, "in hopeless conflict".

3.

The issue involved is of public importance. It relates directly to the working conditions of railroad employees throughout the nation and therefore affects commerce. It may safely be said that every railroad in the nation today operating as a common carrier is engaged in the carriage of goods in interstate commerce; each road, no matter how small, forming a connecting link in the vast and intricate network of transportation systems reaching from one end of the country to the other. This Court, in the "Tap Line Cases" 234 U.S. 1, 29, 240 U.S. 294, 257 U.S. 114, held that short tap lines connecting with trunk line carriers were subject to regulation by the Interstate Commerce Commission, as being engaged in the transportation of goods in interstate commerce.

Since the Railway Labor Act was intended to foster the peaceable settlement of labor disputes between carriers and their employees, and thereby minimize interruption in the flow of commerce, it follows that the question of the validity of an employment agreement made pursu-

ant to the Act is one of public importance and of which this Court should take jurisdiction and decide for the future guidance of the state and federal courts alike.

> "As the issue was deemed a federal question of substance undecided by this Court and in which there was a lack of uniformity in the state court decisions, certiorari was granted."
>
> *Baltimore & Ohio R. Co.* v. *Kepner*, 314 U.S. 44.
>
> "We took this case because it presents important questions of appellate practice . . . "
>
> *Bernards* v. *Johnson*, 314 U.S. 20.
>
> "We granted the petition for certiorari because of the public importance of the first problem and the contrariety of the views of the court below and the judges of the Circuit Court of Appeals of the Ninth Circuit as respects its solution."
>
> *Textile Mills, etc.*, v. *Commissioner of Internal Revenue*, 314 U.S. 327.

It is respectfully submitted that a rehearing should be granted, that the order of October 11, 1943, denying certiorari, should be set aside, and that a writ of certiorari should issue.

Respectfully submitted,

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